

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

EVALINE VIGILETTI,

Plaintiff,

vs.

Case No. 2014-1342-CK

WILLIAM CHERFOLI and CARL
VOELKER,

Defendants.

OPINION AND ORDER

Defendants have filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff has filed a response and requests that the motion be denied. Defendants have also filed a reply brief in support of their motion.

Factual and Procedural History

In 1997 Plaintiff was hired by Great Lakes Sports City, a/k/a Fraser Hockeyland ("Great Lakes"), as a front desk secretary. Defendants owned Great Lakes from 2011 to 2012. In January 2011, Plaintiff was allegedly advised that Great Lakes' funds were short and that it would be unable to pay her salary, and that her pay would be decreased. Subsequent to that meeting, Plaintiff and Great Lakes allegedly agreed that Plaintiff's hours would be deducted in order to reduce her salary.

On April 4, 2014, Plaintiff filed her complaint in this matter alleging that Defendants promised that they would pay her out of their own pockets for the work that she did for Great Lakes, that they failed to compensate Plaintiff for the services she performed for them, and that Defendants have been unjustly enriched by her services.

On November 3, 2014, Defendants filed their instant motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff has filed a response and requests that the motion be denied. On December 8, 2014, the Court held a hearing in connection with the motion and took that matter under advisement.

Standard of Review

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

Arguments and Analysis

In their motion, Defendants contend that the damages Plaintiff seeks to recover is based on work that she performed for Great Lakes, and that they are not individually liable for the debts of Great Lakes. In her response, Plaintiff asserts that Defendants promised to pay her the agreed-upon salary, minus expenses, and that they would personally make up the difference for any amounts that Great Lakes could not pay. However, Plaintiff has testified that neither Defendant promised to pay her anything out-of-pocket (*See* Plaintiff's Exhibit 1, at 83) and that she did not work personally for either defendant (*Id.* at 82). Moreover, Plaintiff's breach of contract allegations boil down to her

assertion that Defendants promised to pay any amounts owed by Great Lakes that it was unable to pay. However, Defendants' alleged promise is a promise to pay the debts of another, i.e. Great Lakes, which, pursuant to MCL 566.132(1)(b) is a type of promise which must be in writing to be enforceable. In this case, it is undisputed that the alleged promise, if it was ever made, was not reduced to writing and signed by Defendants. Accordingly, the alleged oral contract is unenforceable and Defendants' motion for summary disposition of Plaintiff's breach of contract claim must be granted.

With respect to Plaintiff's unjust enrichment claim, a plaintiff may pursue an unjust enrichment theory where an alleged oral contract is barred by the statute of frauds. See *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 545; 472 NW2d 652 (1991) (Holding that the statute of frauds does not bar the assertion of an unjust enrichment claim). Accordingly, Plaintiff may proceed on her unjust enrichment despite the fact that her breach of contract claim is barred by the statute of limitations.

In this case Plaintiff's unjust enrichment claim requires a finding that owners of a company are unjustly enriched when their company receives a benefit but does not pay for the benefit. However, Plaintiff has failed to provide the Court with any authority that stands for the proposition that an employee may maintain an unjust enrichment claim against the owner(s) of a company when the company receives a benefit but does not compensate the employee for the benefit they have incurred on the company. As such the Court is convinced that Plaintiff has failed to properly support her position. Consequently, Defendants' motion for summary disposition of Plaintiff's unjust enrichment claim must be granted.

Finally, with respect to Plaintiff's conversion claim Plaintiff alleges that Defendants converted her money to their own use. However, the obligation to compensate Plaintiff for her services belonged to Great Lakes, not Defendants as Plaintiff has failed to provide any authority that would obligate them to pay her. Consequently, Defendants' motion for summary disposition of Plaintiff's conversion claim must be granted.

Conclusion

Based upon the reasons set forth above, Defendants' motion for summary disposition is GRANTED. Defendants' request for sanctions is DENIED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last claim closes the case.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: December 12, 2014

JCF/sr

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